NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-116(ND)2021

IN THE MATTER OF :

Siemens Financial Services Pvt. Ltd.
Plot No. 2, Sector 2, Khargar Node
Navi Mumbai-410210 **...Applicant**

Versus

Mr. Vinod Sehwag
(Personal Guarantor of Xalta Food & Beverages Pvt. Ltd.)
X-12, Block X, Hauz Khas,
New Delhi-110016 **...Personal Guarantor**

Order Delivered on: 22.03.2021

SECTION: 95(1) of IBC 2016

CORAM:

SH. ABNI RANJAN KUMAR SINHA, MEMBER (J)
SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Ashwini Kumar Singh, Advocate

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Under consideration is the Application preferred by M/s Siemens Financial Services Pvt. Ltd. **(the 'Applicant/Financial Creditor')**, under Section 95 (1) r/w Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal Guarantors to Corporate Debtor) Rules, 2019. The present Application is filed for initiating the Insolvency Resolution Process **(the "IR Process")** against Mr. Vinod Sehwag (hereinafter, referred as **Personal Guarantor/Debtor**), who is the Guarantor of M/s Xalta Food & Beverages Private Limited **(the 'Corporate Debtor')**.

2. The factual matrix of the case is that the Applicant/Creditor viz., Siemens Financial Services Pvt. Ltd. is (a Company incorporated under the erstwhile Companies Act, 1956) a Non-Banking financial Company duly registered with the Reserve Bank of India, which is primarily engaged in the business of granting loans and other financial facilities.

3. It is stated by the Applicant that it had granted a loan facility vide Sanction Letter dated 11.04.2016 to the Corporate Debtor as borrower and M/s VHV Beverage Pvt. Ltd, as co-borrower.

4. It is further stated by the Applicant that pursuant to the above, a Loan Cum Hypothecation Agreement was entered between the Borrowers and the Applicant. The details of the same are reproduced overleaf :

Sr. No.	Agreement Date & Number	Sanctioned Amount	Loan Tenor (Months)	Rate of Interest (per annum)	Default Interest (per month)
1.	20.04.2016 (A8242870)	Rs.6,65,73,000 /- (Rupees Six Crore Sixty Five Lakh and Seventy Three Thousand Only)	48 Months	14.25%	3%

5. It is further stated by the Applicant that along with the Finance Agreement dated 20.04.2016, several other documents (viz. Guarantee, Acceptance Notice, Promissory Note and updated Repayment Schedule dated 20.04.2016 were also executed by the borrowers and guarantors (individually/jointly/severally) in favour of the Applicant for availing the said loan facility.

6. It is emphasised by the Applicant that Mr. Vinod Sehwag executed the Deed of Personal Guarantee dated 20.04.2016 in the capacity of a Personal Guarantor in favour of the Applicant, thereby guaranteeing due payment of all the amounts due and payable by the Borrower/Corporate Debtor to the Applicant.

7. It is submitted by the Applicant that the Corporate Debtor has failed to repay the said loan on the its due dates and, therefore, the account was declared as NPA on 18.06.2018.

8. It is further submitted by the Applicant that this Adjudicating Authority vide Order dated 25.07.2018 has initiated CIR Process by admitting an Application filed under Section 9 of IBC 2016, registered as (IB)-702(ND)/2018 in the matter of Sole Proprietor Nand Kishore Gautam Vs. Xalta Food and Beverages Pvt. Ltd.

9. That during the course of hearing on 24.02.2021, this Bench had asked the Applicant to place on record the facts as to when did it file the claim before the RP in the matter in which CIRP has been initiated against the Corporate Debtor.

10. That the Applicant in compliance to the same has filed an Affidavit dated 06.03.2021, wherein the proof of filing of claim is enclosed and it is submitted that the claim was filed before the IRP of the Corporate Debtor on 18.08.2018 by filing the Form C.

11. It is averred by the Applicant that it had sent a Notice vide Speed Post dated 22.10.2020 in Form B under Rule 7(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Personal Guarantor, demanding payment of total outstanding amount of Rs.8,18,97,538/-. The tracking Report is placed at Page-81 of the Petition, depicting the status as 'item delivered'.

12. The Applicant has clearly brought out in its application annexed with documents that the Personal guarantor/Debtor has committed default in making repayment of the loan along with the interest to the Applicant, for

which he has given the personal guarantee to the Applicant on behalf of the Corporate Debtor.

13. It is made known to everyone that on filing this Application by the Applicant/ Creditor, the interim-moratorium commences as stipulated under Section 96 (1) (a) in relation to all the debts of the personal guarantor and shall cease to have effect on the date of admission of this Application and during the interim- moratorium period, the following are prohibited:

(a) Any pending legal action or proceeding in respect of any debt of the personal guarantor shall be deemed to have been stayed; and

(b) The Creditors of the personal guarantor shall not initiate any legal action or proceedings in respect of any debt.

This shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

14. The Applicant/Creditor has proposed the name of Mr. Amit Ojha, Insolvency Professional, for appointment as Resolution Professional, who has accepted to be appointed and declared that he is eligible to be appointed and that no disciplinary proceedings are pending against him. Therefore, Mr. Amit Ojha is appointed as the Resolution Professional in exercise of the powers conferred under Section 97 of the IBC, 2016 on this Authority subject to the Regulation 4 (1) and (2) of the Insolvency and bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. The details of the Resolution Professional are as under:

Name	:	Mr. Amit Ojha
Registration No.	:	IBBI/IPA-002/IP-N01005/2020-2021/13275
Address	:	A015, Sector XU 1, Greater Noida, Near Scholars Home International School, Gautam Budddha Nagar, Uttar Pradesh-201306
E-mail	:	amitojha@hotmail.com
Mobile Number	:	9891511114

15. The Resolution Professional shall exercise all the powers as enumerated under Section 99 of the IBC, 2016 r/w the Rules made there under. **He is directed to examine the Application and make recommendations along with the reasons in writing for acceptance or rejection of this Application within the stipulated time as envisaged under the provisions of Section 99 of the IBC, 2016.** The RP shall give a copy of the report under Sub-Section (7) of Section 99 to the Applicant/Creditor, as soon as the same is filed before this Authority.

16. The Applicant or his Counsel and the Registrar/Court Officer are directed to serve the copy of this Order along with copy of the Application and documents immediately on the Resolution Professional so appointed by all modes for information and compliance.

17. List the matter on 22.04.2021.

-sd-
(L. N. Gupta)
Member (T)

-sd-
(Abni Ranjan Kumar Sinha)
Member (J)